IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6550 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH S JOSHI

Versus

BANK OF MAHARASHTRA

Appearance:

MR Saurabh Mehta for Petitioner

Ms. Yogini Parikh for MR KM PATEL for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/12/2000

ORAL JUDGEMENT

The present petition has been filed by the petitioner above named under Articles 226 and 227, 14 and 16 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the award at Annexure 'A' in Reference (ITC) No.9 of 1985 and for directing the respondent authorities to treat the petitioner as if the services were never terminated and

the order at annexure 'C' was never passed and further directing the respondents to reinstate the petitioner with all arrears and wages within a fortnight. The petitioner above named was working as Special Assistant in Raopura Branch, Baroda and his services were terminated by order dated 21.8.1991. It seems that the petitioner was working in the employment of Bank of Maharashtra as Special Assistant and certain charges were levelled against the petitioner mainly to the effect that he posted certain entries in the ledger of the bank showing credits in his account to the tune of Rs.30,000/or Rs.35,000/-. A departmental enquiry was conducted and he was found guilty of the said charges levelled against him. The petitioner preferred departmental appeal unsuccessfully, since it was dismissed on 23.9.1981. Feeling aggrieved by the said order of the Appellate Authority, the petitioner preferred Special Civil Application No.2100/84 wherein, it was directed that the petitioner should approach appropriate forum. Thereupon the petitioner went to the Industrial Tribunal, by way of Reference No.(ITC) 9/85. The learned tribunal heard the petitioner and considered the materials on record and came to the decision that there was no case proved by the petitioner and, therefore, the Industrial Tribunal dismissed the matter of the petitioner. However, the tribunal recommended that the past record of the petitioner may be considered and it may also be considered that the present petitioner has been put to a state of unemployment since the date of his dismissal from service. Therefore, some ex-gratia payment may be made to him and it may also be considered if gratuity or any other amount could be paid to him. It appears that pursuant to such direction, the respondent thought it fit to pay an amount of Rs.10,000/- to the petitioner. The petitioner was not satisfied by the aforesaid direction and, therefore, the present petition has been filed, challenging the said decision of the Industrial Tribunal.

2. It has been mainly contended here that even if it is held that the petitioner posted wrong entries in the ledger of the respondent bank, no loss was caused to the bank and, therefore, extreme penalty of dismissal should not have been imposed on the petitioner. It is, therefore, prayed that at least the petitioner should be reinstated quashing and setting aside the order of his dismissal.

3. On receipt of the petition, rule was issued. Mr K M Patel, learned Advocate appeared on behalf of the respondent bank. I have heard Mr Saurabh Mehta, learned

Advocate for the petitioner and Ms. Yogini Parikh for Mr K M Patel, for the respondent. I have also perused the papers. It is an admitted position that the petitioner was serving as Special Assistant in Raopura Branch at Vadodara in the Bank of Maharashtra. It is not much in dispute that certain entries were made by the petitioner showing the credits in his own bank account an amount of Rs.30,000/- to Rs. 35,000/-. There were 4-5 such entries made by the petitioner. It is also not much in dispute that subsequently reverse entries were posted so as to delete the earlier 4 to 5 entries. Therefore, practically there was no loss to the respondent, which cannot be disputable. It has, therefore, been contended at length by the learned Advocate for the petitioner that since there was no loss caused to the respondent bank, the petitioner should not have been ousted from service by order of dismissal. I have given my anxious thought to the aforesaid argument. The said argument at the first instance, sounds to be an acceptable one since it is not in dispute that when the subsequent entries were posted in the ledger account of the petitioner, the initial entries were wiped out and, therefore, there is no consequential loss to the respondent. But at the same time, the very act of posting entries in his own bank account is really an act exhibiting criminal mind of the petitioner. The bank account is a public account dealing with public money and when the petitioner did not deposit any amount in his own account and yet when he made entries into his own account showing additional credit of about Rs.35,000/-. That would also amount to falsification of account, which ultimately amounts to criminal offence. It is not mentioned or argued as to why the petitioner was required to make credit entries in his own account to the tune of Rs.35,000/-. An attempt was made to show that the petitioner was put to adverse circumstances and, therefore, under pressure of circumstances, he had posted those entries. It is very difficult to accept the said version advanced on behalf of the petitioner. A person placed under adverse circumstance was not expected to post credit entries of the aforesaid amount into his own account. I am of the view that the charge levelled against the petitioner was serious and it could not be lightly taken for the purpose of quantum of punishment. It is to be seen that if this aspect was not noticed by the bank, then the petitioner could have withdrawn the said amount from his account and ultimately, there would have been complication in future. This would also mean that this sort of act on the part of the petitioner cannot be lightly considered. Even the tribunal has indisputedly considered this conduct of the petitioner. It is to be seen that the learned Industrial

Tribunal has dealt with the said issue at a considerable length, since the judgment runs into 34 pages. It is, therefore, clear that the petitioner admittedly made false credit entries in his own account, which ultimately would amount to criminal offence also. Considering this conduct on the part of the petitioner, it cannot be said that the punishment of dismissal is too harsh to be imposed upon the petitioner. It is more so, when this question has been dealt with by the Industrial Tribunal, I am of the view that when a bank employee makes false posting of credit entries in his own account, then he cannot be treated to be a person fit and suitable for reinstatement purpose. Learned Advocate for the petitioner has made a grievance that though the learned Industrial Tribunal has made recommendation for appropriate payment. The said payment has not been made to the petitioner. As against this, the learned Advocate for the respondent Bank has also argued that orders have been passed for payment yet payment but the payment has probably, not been collected by the petitioner from the bank. She further argued that there are certain dues outstanding against the petitioner and they are also required to be recovered. In that view of the matter, it is required to be observed that when the respondent has decided to pay some amount to the petitioner in accordance with the recommendation of the tribunal, the respondent shall naturally pay the said amount to the petitioner. At the same time, if some amount is required to be deducted as aforesaid, then the respondent can legally and naturally deduct the said amount also. When the respondent has been directed to consider the aforesaid aspect of the matter, then the respondent will naturally respect the order of the tribunal. I am sure, the respondent will not go away from the said responsibility.

4. It has been further submitted that even the contribution of the petitioner towards the provident fund has not been paid to the petitioner. There is no reason to withhold this amount. It is directed that the respondent shall calculate the same and if it is payable to the petitioner, the respondent shall pay the same to the petitioner after deducting the dues of the respondent bank, if any, as expeditiously as possible and preferably within three months from the date of receipt of the writ.

5. With these observations, in my opinion, there is no merit in the present petition and, therefore, the punishment imposed is not found to be excessive or harsh, considering the misconduct exhibited by the petitioner,

which is not in dispute at all.

6. In the result, there is no merit in this petition so far as the prayer of reinstatement is concerned. At the same time, the petition is required to be partly allowed as regards the petitioner's contention to the provident fund. Hence, this petition is partly allowed to the extent indicated above and it is dismissed as regards the prayer for quashing and setting aside the impugned order of the respondent Bank. Rule made absolute only to the extent indicated above.There shall be no order as to costs. D.S. permitted.

15.12.2000 [D P Buch, J.]
msp